

Scott Paper Company and John G. Karasti, Petitioner and United Paperworks International Union Local No. 86, AFL-CIO-CLC. Case 30-RD-605

August 13, 1981

DECISION ON REVIEW AND ORDER

On March 27, 1981, the Regional Director for Region 30 issued his Decision and Direction of Election in the above-entitled proceeding in which he found that the "total instrument technicians" had not been merged into a broader unit and directed an election among them at the Employer's Marinette, Wisconsin, location.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Union filed a timely request for review of the Regional Director's decision urging, *inter alia*, that the Regional Director erred in carving out a unit of seven instrumentmen from the Employer's plantwide production and maintenance unit and that his decision departs from well-established precedent.

By mailgram dated May 28, 1981, the Union's request for review was granted.

The Board has considered the entire record with respect to the issues under review and makes the following findings:

The Employer is a Pennsylvania corporation engaged in the manufacture of paper products. In June 1979, the Union was certified as the collective-bargaining representative for "all total instrument technicians" (herein called ITs) at the Employer's Marinette, Wisconsin, facility. Since the 1940's the Union has been the collective-bargaining representative of the Employer's production and maintenance employees at the Marinette facility. Although the ITs classification has existed since the late 1940's, there is no evidence that the Union or any other labor organization, at any time prior to 1979, sought to represent the ITs.¹

Prior to the 1979 election the Union explained to the ITs that they would be covered by the same collective-bargaining agreement as the production and maintenance employees. After the Union's certification on June 19, 1979, the ITs were discussed in the then ongoing negotiations which resulted, on July 31, in an agreement covering the plantwide production and maintenance unit. The contract ran

from May 15, 1979, to May 14, 1981. The ITs were actively negotiated over and, according to the record, were placed in the maintenance department under that contract. The Employer's personnel manager, Henry Otterlei, testified that negotiations had not yet concluded by the date of the election among the instrument technicians and that there were discussions in the negotiations as to where that group would be included in the contract. According to Otterlei, "We put them in the maintenance department." He further confirmed that the wage provisions for "instrumentation" on page 43 of the contract and overtime provisions for that classification on page 68 related to the instrument technicians and were discussed between the Union and the Company after the certification and before the contract covering the broad unit was signed. Local 86 President Falk, who was involved in the 1979 negotiations for the collective-bargaining agreement, testified that it was the Union's position that the instrument technicians be placed in the contract "with the mechanical maintenance people," as opposed to being in a separate unit. There is no evidence that there was any bargaining on behalf of the instrument technicians at this plant as a separate unit.

The Union, subsequent to reaching an agreement, invited the ITs to attend the ratification vote, along with all other production and maintenance employees. The record reveals that a majority of the ITs participated in the vote, which resulted in the contract's ratification.

The ITs do not have a separate departmental steward; one employee serves as steward for both the electricians and the ITs.

The Regional Director, notwithstanding the foregoing facts, concluded that the instrument technicians had not been merged into the broader production and maintenance unit as a result of the parties' bargaining and, therefore, he directed an election among the instrumentmen. In so deciding, the Regional Director relied on the relatively short time the ITs were subject to the terms of the agreement—2 years—as opposed to a 40-year history of a separate unrepresented existence. Although he acknowledged the reference to instrument maintenance in the contract's recognition clause, the Regional Director noted that "technical division" employees were excluded. Thus, he concluded the evidence was insufficient and too ambiguous to show that the recognition clause merged the IT employees into the broader unit.

We disagree. Our analysis of the record leads us to conclude that the employer and the union representatives at the negotiations following the election mutually intended to, and did, include that group

¹ The ITs are included in broad units with other employees at the Employer's Everett, Washington, and Oconto Falls, Wisconsin, facilities. In Case 30-UC-31 (1967), involving the Oconto plant, instrument repairmen or mechanics were clarified into the production and maintenance unit at that plant. However the ITs are represented separately at the Employer's Mobile, Alabama, facility. There is testimony that the ITs' functions at the instant location are essentially the same as the instrument mechanics at the Oconto plant.

of employees in the collective-bargaining agreement then being negotiated, and that the ITs were ultimately placed under the maintenance section of the contract. In addition to the evidence of intent cited above, Local 86 President Falk, in response to the Hearing Officer's questioning, stated there was no contention that the instrument employees were technicals or had to be "separated out." Personnel Manager Otterlei testified that he did not think the instrument technician group came up for discussion in relation to the recognition clause language. International Representative Cluberton stated on the record that the Union never contended that the instrument technicians were technicals within the Board's definition, that the Union did not seek to include technicals in the unit, and that was the reason it did not want to change the recognition clause. Significantly, there is no separate recognition clause for an instrument technician unit.²

It is clear that the instrument technicians were covered by the recent contract for a 2-year period and that they acknowledged their placement in the maintenance group in their request to the Union which preceded the instant petition.³ Further, the

² Cf. *Duval Corporation*, 234 NLRB 160 (1978).

³ The Union's Exh. 2, in evidence, contains a copy of a request to the Union by members of the Electrical Maintenance, Electric Plant Operators and Instrument Maintenance Departments of the Employer "to allow

record shows that the instrument technicians work closely with the electricians and other maintenance department employees and are under the direct and overall supervision of the maintenance department's supervisors.

Finally, the fact that the unit has been certified for only 2 years is not, in these circumstances, sufficient to overcome a finding that the ITs unit has been merged, virtually from the date of its certification, with the broader production and maintenance unit.⁴

As we find unmistakable evidence that the parties mutually agreed to merge the instrument technicians into the broader bargaining unit, and have in fact done so, the petition for a decertification election is not coextensive with the existing contract unit, and we shall vacate the election and dismiss the instant petition.⁵

ORDER

It is hereby ordered that the election be vacated and that the petition be dismissed.

the above departments to negotiate with other Union Representation." The request was supported by signatures of various employees which were dated in November 1980. By letter dated December 23, 1980, the Union's vice president responded, denying their request and stating that their contract was "one of the better ones in the paper industry."

⁴ *The Armstrong Rubber Company*, 208 NLRB 513 (1974).

⁵ *W. T. Grant Company*, 179 NLRB 670 (1969).